

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of:

Coates, et al.

Serial No.: 09/695,499

Filing Date: 10/23/00

For: A NETWORK STORAGE SYSTEM



PATENT APPLICATION

Examiner:

<Unassigned>

Art Unit: 2152

**DECLARATION AND POWER OF ATTORNEY
FOR PATENT APPLICATION**

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below, next to my name.

I believe I am an original, first, and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled A NETWORK STORAGE SYSTEM, the specification of which was filed on 10/23/00 as United States Application Number 09/695,499.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claim(s), as amended by any amendment referred to above. I do not know and do not believe that the claimed invention (1) was ever known or used in the United States of America before my invention thereof, (2) was patented or described in any printed publication in any country before my invention thereof or more than one year prior to this application, (3) was in public use or on sale in the United States of America more than one year prior to this application, or (4) was patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months (for a utility patent application) or six months (for a design patent application) prior to this application.

I acknowledge the duty to disclose all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56 (and reprinted in Appendix A).

Claim of Benefit to Provisional Application(s)

I hereby claim the benefit under title 35, United States Code, Section 119(e) of any United States provisional application(s) listed below:

60/186,693	3/3/2000
_____ (Application Number)	_____ (Filing Date)

60/186,774	3/3/2000
_____ (Application Number)	_____ (Filing Date)

Claim of Benefit to Prior Non-Provisional Application(s)

I hereby claim the benefit under Title 35, United States Code, Section 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, Section 112, I acknowledge the duty to disclose all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application:

_____ (Application Number)	_____ (Filing Date)	_____ (Status – patented, pending, abandoned)
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Claim of Foreign Priority

I hereby claim foreign priority benefits under Title 35, United States Code, Section 119(a)-(d), of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

<u>Prior Foreign Application(s)</u>	<u>Priority Claimed</u>			
_____ (Number)	_____ (Country)	_____ (Day/Month/Year Filed)	Yes	No

Power of Attorney


I hereby appoint the persons listed on Appendix B hereto (which is incorporated by reference and a part of this document) as my respective patent attorneys and patent agents, with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith.

Send correspondence to:

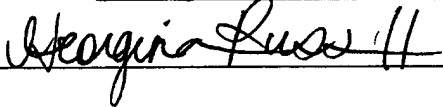
John Stattler
STATTLER, JOHANSEN & ADELI LLP
P.O. Box 51860
Palo Alto, California 94303-0728

and direct telephone calls to
John Stattler, at (650) 934 0470, ext. 100.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of First Inventor Joshua L. Coates
Inventor's Signature  Date 2/26/01
Residence Orinda, California Citizenship USA
Post Office Address 70 Brookwood Road, Orinda, California 94563

Full Name of Second Inventor F. Alan Jones
Inventor's Signature _____ Date _____
Residence Menlo Park, California Citizenship USA
Post Office Address 415 Pope Street, Menlo Park, California 94025


Full Name of Third Inventor Georgina L. Russell
Inventor's Signature  Date 2/26/01
Residence San Francisco, California Citizenship USA
Post Office Address 899 Oak Street, #4, San Francisco, California 94117

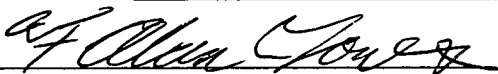
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Inventor's Signature  Date 2/27/01
Residence Menlo Park, California Citizenship USA
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Full Name of Third Inventor Georgina L. Russell
Inventor's Signature  Date _____
Residence San Francisco, California Citizenship USA
Post Office Address 899 Oak Street, #4, San Francisco, California 94117

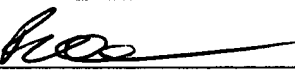
Full Name of Fourth Inventor Michael Gonzalez

Inventor's Signature  Date 2/26/01

Residence Castro Valley, California Citizenship USA

Post Office Address 20949 Wilbeam Avenue, Castro Valley, California 94546


Full Name of Fifth Inventor Patrick E. Bozeman

Inventor's Signature  Date 2/26/01

Residence San Francisco, California Citizenship USA

Post Office Address 500 Beale Street, #311, San Francisco, California 94105

Full Name of Sixth Inventor Taylor Gautier

Inventor's Signature  Date 2/26/01

Residence San Francisco, California Citizenship USA

Post Office Address 708 38th Ave., #3, San Francisco, California 94121

Full Name of Seventh Inventor David A. Patterson

Inventor's Signature _____ Date _____

Residence Kensington, California Citizenship USA

Post Office Address 114 Purdue Avenue, Kensington, California 94708

Full Name of Fourth Inventor Michael Gonzalez

Inventor's Signature  Date _____

Residence Castro Valley, California Citizenship USA

Post Office Address 20949 Wilbeam Avenue, Castro Valley, California 94546

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Post Office Address 500 Beale Street, #311, San Francisco, California 94105


Full Name of Sixth Inventor Taylor Gautier

Inventor's Signature  Date _____

Residence San Francisco, California Citizenship USA

Post Office Address 708 38th Ave., #3, San Francisco, California 94121

Full Name of Seventh Inventor David A. Patterson

Inventor's Signature  Date 2/27/01

Residence Kensington, California Citizenship USA

Post Office Address 114 Purdue Avenue, Kensington, California 94708

APPENDIX A

Title 37, Code of Federal Regulations, Section 1.56
Duty to Disclose Information Material to Patentability

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) Prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) The closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made or record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
- (2) Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

APPENDIX B

Mani Adeli, Reg. No. 39,585; Dag H. Johansen, Reg. No. 36,172; John Stattler, Reg. No. 36,285, Anand Sethuraman, Reg. No. 43,351; my patent attorneys, of STATTLER, JOHANSEN & ADELI LLP, with offices located at 2672 Bayshore Parkway - Suite 304, Mountain View, California 94043, telephone (650) 934-0470, fax (650) 934-0475.

JOINT INVENTORS TO CORPORATION ASSIGNMENT

WHEREAS, the undersigned Inventors:

- (1) Joshua L. Coates, a resident of Orinda, California;
- (2) F. Alan Jones, a resident of Menlo Park, California;
- (3) Georgina L. Russell, a resident of San Francisco, California;
- (4) Michael Gonzalez, a resident of Castro Valley, California;
- (5) Patrick E. Bozeman, a resident of San Francisco, California;
- (6) Taylor Gautier, a resident of San Francisco, California; and
- (7) David A. Patterson, a resident of Kensington, California,

COPY



have invented certain new and useful improvements in:

A NETWORK STORAGE SYSTEM

and have executed a declaration or oath for an application for a United States patent disclosing and identifying the invention:

- Said application having SC/Serial Number 09/695,499 and filed on October 23, 2000.

WHEREAS Scale Eight, Inc. (hereinafter termed "Assignee"), a corporation of the State of Delaware, having a place of business at 625 Second Street, Suite 201, San Francisco, California, wishes to acquire the entire right, title and interest in and to said application and the invention disclosed therein, and in and to all embodiments of the invention, heretofore conceived, made or discovered jointly or severally by said Inventors (all collectively hereinafter termed "said invention"), and in and to any and all patents, certificates of invention and other forms of protection thereon (hereinafter termed "patents") applied for or granted in the United States and/or other countries.

NOW THEREFORE, for good and valuable consideration acknowledged by each of said Inventors to have been received in full from said Assignee:

1. Said Inventors do hereby sell, assign, transfer and convey to said Assignee, the entire right, title and interest (a) in and to said application and said invention; (b) in and to all rights to apply in any or all countries of the world for patents, certificates of inventions or other governmental grants on said invention, including the right to apply for patents pursuant to the International Convention for the Protection of Industrial Property or pursuant to any other convention, treaty, agreement or understanding; (c) in and to any and all applications filed and any and all patents, certificates of inventions or other governmental grants granted on said


invention in the United States or any other country, including each and every application filed and each and every patent granted on any application which is a division, substitution, or continuation of any of said applications; (d) in and to each and every reissue or extension of any of said patents; and (e) in and to each and every patent claim resulting from a reexamination certificate for any and all of said patents.

2. Said Inventors hereby jointly and severally covenant and agree to cooperate with said Assignee to enable said Assignee to enjoy to the fullest extent the right, title and interest herein conveyed in the United States and other countries. Such cooperation by said Inventors shall include prompt production of pertinent facts and documents, giving of testimony, executing of petitions, oaths, specifications, declarations or other papers, and other assistance all to the extent deemed necessary or desirable by said Assignee (a) for perfecting in said Assignee the right, title and interest herein conveyed; (b) for complying with any duty of disclosure; (c) for prosecuting any of said applications; (d) for filing and prosecuting substitute, divisional, continuing or additional applications covering said invention; (e) for filing and prosecuting applications for reissue of any of said patents; (f) for interference or other priority proceedings involving said invention; and (g) for legal proceedings involving said invention and any applications therefor and any patents granted thereon, including without limitation opposition proceedings, cancellation proceedings, priority contests, public use proceedings, reexamination proceedings, compulsory licensing proceedings, infringement actions and court actions; provided, however, that the expense incurred by said Inventors in providing such cooperation shall be paid for by said Assignee.

3. The terms and covenants of this Assignment shall inure to the benefit of said Assignee, its successors, assigns and other legal representatives, and shall be binding upon said Inventors, their respective heirs, legal representatives, and assigns.


4. Said Inventors hereby jointly and severally warrant and represent that they have not entered and will not enter into any assignment, contract, or understanding in conflict herewith.

IN WITNESS WHEREOF, the said Inventors have executed this instrument on the date of acknowledgement as given below and delivered this instrument to said Assignee.

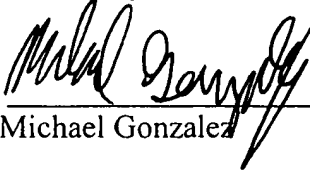
- (1) 

Joshua L. Coates
Date _____

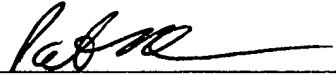
- (2) _____
F. Alan Jones
Date _____

- (3) 

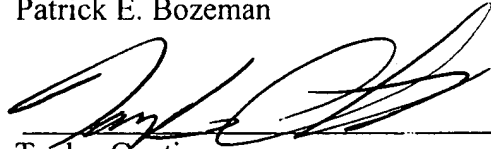
Georgina L. Russell
Date _____

- (4) 


Michael Gonzalez
Date _____

- (5) 

Patrick E. Bozeman
Date _____


- (6) 

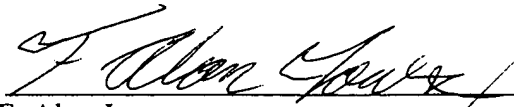
Taylor Gautier
Date _____

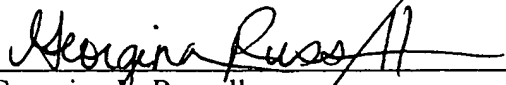
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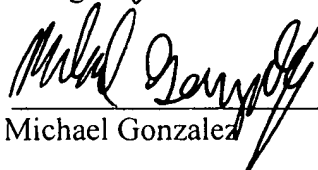
David A. Patterson
Date 2/27/01

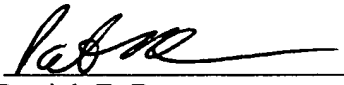
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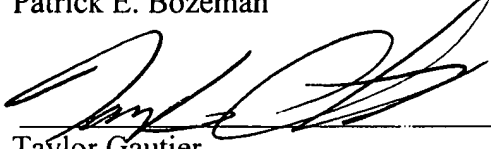
- (1) 

Joshua L. Coates _____ Date _____
- (2) 

F. Alan Jones _____ Date 2/27/01
- (3) 

Georgina L. Russell _____ Date _____
- (4) 

Michael Gonzalez _____ Date _____
- (5) 

Patrick E. Bozeman _____ Date _____
- (6) 

Taylor Gautier _____ Date _____
- (7) _____
David A. Patterson _____ Date _____